

Remarks

This Amendment is in response to the Final Office Action dated **March 17, 2008**.

Claims 1-7, 10-11 and 45-63 are pending in the application.

Election/Restriction

Claims 45-63 directed to a medical device tubing have been restricted and withdrawn as directed to a patentably distinct invention from the laminate articles of claims 1-7 and 10-11. Reconsideration is requested.

Throughout the prosecution of this case, rejection of the article claims has relied in part on documents pertaining to medical device tubing articles. Three of the four documents relied upon in the final rejection are in this category (Wang et al US 5,195,969, Samuelson et al US 6,464,683 and Shimura, US 5,441,488). It is not burdensome to the examination process to expect to address the issue of the nonobviousness of combining these documents with the remaining reference, (Boer et al US 6,355,358), for the specific type of articles disclosed in three of the four cited patents.

This is particularly so in the present case in which the Office has previously unilaterally withdrawn applicant's appeal and reopened prosecution. An examination process that allowed the Office to reopen prosecution, but then precluded the applicant from submitting claims that focus on a specific embodiment of the subject matter being claimed at the time of reopening prosecution, would be an arbitrary and capricious action and/or abuse of discretion. Such action is prohibited by the Administrative Procedure Act (5 USC §706(2)(A)) and by the Due Process Clause of the United States Constitution.

For the foregoing reasons it is requested that the restriction of claims 45-63 be

lifted.

Withdrawn claims 45-63 are seen to be patentable over the documents cited in the Final Action against claims 1-7 and 10-11 for at least the reasons stated in the Amendment filed 13 December 2007. Therefore, upon reconsideration and withdrawal of the restriction requirement, claims 45-63 are seen to be in condition for allowance.

Claim Rejections 35 USC §103

The Office Action asserts that the subject matter of claims 1-7 and 10-11 is obvious under 35 USC §103(a) from Wang et al, US 5,195,969, Samuelson et al, US 6,464,683, or Boer et al, US 6,355,358, in view of Shimura et al, US 5,441,488. Reconsideration is requested.

Claim 1 recites as a melt modifier a coupling agent "selected from the group consisting of *polyepoxides, polyoxazalines, polycarbodiimides, and polyisocyanates*" (emphasis added). Claims 2-7 and 10-11 depend from claim 1.

The applicant has repeatedly pointed out that *none* of the references disclose a polymer material that has been modified with such coupling agent. This argument has never been addressed in *any* Office Action. The statements in the "Response to Arguments" portion of the Final Action pertain to anhydride-modified polyolefins and as such are simply irrelevant to claims 1-7 and 10-11.

The Office Action fails to state any basis on which a polymer or polymer material that has been modified with a polyepoxide, polyoxazaline, polycarbodiimide, or polyisocyanate coupling agent could be considered obvious from a use of an anhydride-modified polyolefin. Therefore a *prima facie* case of obviousness has not even been articulated, much less shown. For

at least this reason withdrawal of the rejection of claims 1-7 and 10-11 is respectfully requested.

Conclusion

The restriction of claims 45-63 and the outstanding obviousness rejection of claims 1-7 and 10-11 should be withdrawn. The application is in condition for allowance. Early and favorable action thereon is respectfully requested.

Respectfully submitted,
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Date: May 1, 2008

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